

BEFORE THE DIRECTOR
OF THE
OFFICE OF CAMPAIGN FINANCE
D.C. BOARD OF ELECTIONS AND ETHICS
2000 14TH STREET, N.W., SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

Harold Brazil
At Large Councilmember
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

DATE: September 10, 2004

DOCKET NO.: Investigation 04-01

ORDER

Statement of the Case

This matter arises out of an internal inquiry instituted by the Office of Campaign Finance (OCF) on June 3, 2004, as a result of an article in the Washington Post, entitled “Brazil Used D.C. Staff for Private Law Work,” by Serge F. Kovaleski. The article identified Harold Brazil (respondent), At Large Councilmember of the District of Columbia Council of the District of Columbia, as availing himself of the legal services of three (3) members of his Council staff, from 1999 to the present, allegedly for purposes of enriching his private law practice, in contravention of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), D. C. Official Code §§1-1101.01 et seq. (2001 Edition), and the Employee Conduct provisions (Standards of Conduct) of the D.C. Personnel regulations at chapter 18. Specifically, the Washington Post reported that James Abely, Aimee Occhetti, and Dora Rodrigues, employees of respondent at his Council office during the pertinent period, substituted for respondent in court and prepared documents for his cases for respondent’s private firm. Upon evaluation of OCF records, a full investigation was launched on June 16, 2004.

Issues

1. Whether respondent used his official position or office of “At Large Councilmember of the District of Columbia City Council” to obtain financial gain for himself or his private law practice, in violation of D.C. Official Code §1-1106.01(b), when he allegedly availed himself of the legal services of James Abely, Aimee Occhetti, and Dora Rodrigues, when they were employed on respondent’s Council staff during a period from 1999 to the present?
2. Whether respondent violated §1804.1(b) of the Standards of Conduct when he allegedly used the legal services of James Abely, Aimee Occhetti, and Dora Rodrigues, when they were employed on respondent’s Council staff during a

period from 1999 to the present, to perform services for his private law practice during government time and using government resources?

3. Whether respondent violated §1804.1(c) of the Standards of Conduct when he allegedly ordered, directed or requested James Abely, Aimee Occhetti, and Dora Rodrigues, to perform legal services for his private law practice during regular working hours, when they were employed on respondent's Council staff during a period from 1999 to the present?
4. Whether respondent violated §1804.1(e) of the Standards of Conduct when he allegedly permitted Aimee Occhetti and Dora Rodrigues to capitalize on his official position or office of "At Large Councilmember of the District of Columbia City Council" because of their involvement with his private legal practice?

Background

The Board of Elections and Ethics (Board), through OCF, is responsible for enforcing the Act and the Standards of Conduct against certain District employees. D.C. Official Code §1-1106.01(a) states, "The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust." OCF monitors this conduct, in part, through its oversight of the Financial Disclosure Statements (FDS), upon which these employees disclose financial interest which may place them in a conflict situation. See D.C. Official Code §1-1106.02. These same employees must adhere to the Standards of Conduct, which provide that they "shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government." See §1800.1. It should be noted that pursuant to OCF regulations, the Director may inquire into an alleged campaign finance violation uncovered by the media. See 3 D.C.M.R. §3702 (1998, as amended).

Thus, upon receipt of the Washington Post article, OCF sought to determine whether the employees involved were within its sphere of enforcement. A review of OCF records for the pertinent period indicated that respondent, James Abely and Aimee Occhetti were FDS filers, and, therefore, subject to OCF jurisdiction.

On June 16, 2004, OCF determined that an examination of the allegations would be required and informed respondent that a full investigation had commenced in connection with the media report. Payroll documents regarding James Abely, Aimee Occhetti and Dora Rodrigues; and, responses to interrogatories were requested. On the same date, payroll records for same were requested from the Secretary of the Council of the District of Columbia and the accounts manager at Koonz, McKenny, Johnson, DePaolis & Lightfoot of Washington, D.C., with whom respondent formerly practiced.

On June 18, 2004, OCF notified James Abely, Aimee Occhetti and Dora Rodrigues, of the investigation into respondent's activities as their employer during a period from 1999

to the present; and, they were requested to respond to interrogatories. All parties requested and received extensions within which to return the interrogatories as a result of personal schedules and the desire to retain counsel.

As a result of continued media coverage, OCF sought answers to additional questions in this matter and submitted a second set of interrogatories to respondent on June 25, 2004. On the same date, OCF received an entry of appearance by Frederick D. Cooke, Jr., Esquire, of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. of Washington, D.C. for the law firm of Koonz, McKenny, Johnson, DePaolis & Lightfoot, and L.L.P (KMJDL).

On June 28, 2004, OCF received the pertinent payroll records for James Abely, Aimee Occhetti and Dora Rodrigues from Secretary to the Council of the District of Columbia. Similarly, on July 9, 2004, OCF received the pertinent payroll records for Aimee Occhetti and Dora Rodrigues from KMJDL counsel.

On July 12, 2004, OCF received an entry of appearance by Donald R. Dinan, Esquire, of Hall, Estill, of Washington, D.C., for respondent. He also submitted respondent's responses to the two sets of interrogatories. On July 26, 2004, OCF also received an entry of appearance by Joe Robert Caldwell, Jr., Esquire, of Baker Botts, L.L.P. of Washington, D.C., for Dora Rodrigues.

After reviewing respondent's answers to the interrogatories, and in order to elicit answers to the interrogatories on the record, OCF issued Notices of Hearing, Statements of Violations and Orders of Appearance to respondent, Mr. Abely and Ms. Occhetti, on August 6, 2004, compelling an August 13, 2004 appearance before OCF.

On August 13, 2004, respondent, accompanied by counsel, and Ms. Occhetti, in the presence of respondent's counsel, responded to the OCF interrogatories and other queries from OCF Senior Staff Attorney, William O. SanFord. Mr. Abely sought and received an extension within which to appear because his counsel was unavailable.

On August 25, 2004, Mr. Abely answered the interrogatories and other queries from Mr. SanFord on the record. He was accompanied by Robert Watkins, Esq. of Williams & Connolly of Washington, D.C. who entered his appearance on Mr. Abely's behalf.

The investigation was formally completed today on September 10, 2004. The scope of the OCF investigation encompassed reviewing, analyzing and verifying all submitted information; examining applicable court records and regulations; research; and in-house meetings.

Relevant Statutory Provision

D.C. Official Code §1-1106.01(b) reads:

No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than

that compensation provided by law for said public official. This subsection shall not affect a vote by a public official: (1) on any matter which affects a class of persons (such a class shall include no less than 50 persons) of which such public official is a member if the financial gain to be realized is de minimis; (2) on any matter relating to such public official's compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board or commission of the District of Columbia, except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

Relevant Regulatory Provisions

Section 3711.2 of the OCF regulations provides that a fine of \$2000 shall be imposed upon a person who uses his or her official position for personal financial gain. 3 D.C.M.R. §3711.2(v).

Section 3711.6 of the OCF regulations reads:

The Director may modify, rescind, dismiss or suspend any fine imposed, pursuant to §3711, for good cause shown; Provided that fines imposed for failure to file an eight (8) day pre-election report shall be mandatory, unless a written extension for filing the report, pursuant to chapter 30 of this title, has been granted by the Director.

3 D.C.M.R. §3711.6.

Section 1801, "Remedial Action," of the Standards of Conduct reads:

- "1801.1 Violation of these regulations by an employee may result in remedial action which may be in addition to any penalty prescribed by law.
- "1801.2 When, after consideration of the explanation of the employee, the Board of Elections and Ethics or the agency head decides that remedial action is required regarding any matter covered under this chapter, appropriate action shall be immediately taken or ordered. Remedial action may include, but shall not be limited to, the following:
 - “(a) Changes in assigned duties;
 - “(b) Divestment by the employee of his or her conflicting interest;”
 - “(c) Corrective or adverse action pursuant to [the personnel regulations]; or
 - “(d) Disqualification for a particular assignment.”

Section 1802.1 of the Standards of Conduct provides that enforcement of the Standards of Conduct against members of boards and commissions required to file Financial Disclosure Statements (FDS) with OCF and employees in the Executive Service is the responsibility of the Board; and, said responsibility is delegated to OCF.

“1804.1 An employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include, but are not limited to, the following:

...

- “(b) Using government time or resources for other than official business, or government approved or sponsored activities, except that a District employee may spend a reasonable amount of government time and resources on such projects, reports, and studies as may be considered in aid of other government jurisdictions (local, state or federal), provided the work so “performed is within the scope of the individual’s regular assignments as a District employee;
- “(c) Ordering, directing, or requesting subordinate officers or employees to perform during regular working hours any personal services not related to official D.C. government functions and activities; [and]
- “(e) Engaging in any outside employment, private business activity, or interest which permits an employee, or others, to capitalize on his or her official title or position[.]”

Summary of Evidence

In support of his position, respondent relies upon his sworn statements during the hearing of August 13, 2004. Attachment A. During direct examination by Mr. Sanford, respondent stated that he had reviewed the interrogatories and attested to the accuracy and the truthfulness of the responses he provided through his attorney in a document of attestation that reflected his signature. In confirmation of these answers, respondent continued that on rare occasions, as a result of scheduling conflicts or travel, he asked staff members, Aimee Occhetti and James Abely, appear in the District of Columbia Superior Court on his behalf. He emphasized that he required the staff members to take leave from their work schedule at the Council office whenever they performed any work that was not related to their official duties, even if the work was performed on his behalf. Respondent averred that he did not require his staff members to perform any work for his private practice and further asserted that there was no coercion, threat or inducement associated with his staff members’ decisions to agree to perform the work. Respondent added that the matters in which his staff members assisted him were related to personal injury cases, which is the area of practice in which he exclusively engages. He asserted that the work posed neither a conflict nor a potential conflict to his duties as a Member of the Council of the District of Columbia, of his staff members’ official duties and was completely segregated from District government affairs. Respondent stated that there was no compensation agreement between him and the staff members who performed

work for his practice and they were essentially performing favors for him for which no compensation was expected. With regard to Dora Rodrigues, respondent indicated that she was a temporary, part-time intern for whom he recommended to KMJDL for additional temporary, part-time work. Respondent stated that Ms. Rodrigues never performed any legal services for him at his private practice.

Respondent further relies upon the sworn statements of Ms. Occhetti and Mr. Abely, taken during the hearings of August 13, and August 25, 2004, respectively. Attachments B-C.

During direct examination by Mr. SanFord, Ms. Occhetti stated that she had reviewed the interrogatories and attested to the accuracy and the truthfulness of the responses she provided in a document of attestation that reflected her signature. In confirmation of these answers, Ms. Occhetti affirmed that she appeared at one or two scheduling conferences in the District of Columbia Superior Court on behalf of respondent. She also stated that she took authorized leave from her work schedule at respondent's office whenever she appeared in court on the respondent's behalf. Ms. Occhetti averred that she never performed work for respondent's private practice while on government time. Although she could not recall the specific dates that she attended the court scheduling hearings, she noted that each appearance was for less than a thirty minute period and none of the matters conflicted with her official duties as a government employee. Ms. Occhetti also stated that she had worked part time on a project with the respondent's private law practice of KMJDL, and that she did not work for respondent, for a brief period during 2000 and 2001.

During direct examination by Mr. SanFord, Mr. Abely answered the interrogatories posed and stated that he recalled appearing in the District of Columbia Superior Court on behalf of respondent on two occasions. He specifically recalled appearing at a mediation session for respondent on November 19, 2003 but, he could not recall the exact date of his appearance at a scheduling conference. Mr. Abely further stated that he took authorized leave from his work schedule at the respondent's Council office whenever he appeared in court on the respondent's behalf. Mr. Abely said that the matters upon he appeared in court on respondent's behalf were personal injury case which were neither related nor in conflict with any of his duties as a member of respondent's staff. With regard to his November 19, 2004 court appearance on behalf of the respondent, Mr. Abely stated that he specifically recalls the circumstances under which the respondent requested his assistance. According to him, respondent was on a trade mission in Brussels, Belgium with Mayor Anthony Williams on the date upon which the mediation session was scheduled; and, because the respondent was unable to return to the District of Columbia to attend the session, he telephone Mr. Abely a day or two before the mediation and asked Mr. Abely to "stand in" for him. Mr. Abely also stated that he took leave on the date of the mediation. In reference to the other appearance in court on behalf of respondent's private law practice, Mr. Abely believed the event occurred in late May 2003. According to Mr. Abely, respondent was unable to attend the scheduling conference because, on the date of the conference, respondent was representing District of Columbia City Council at a shopping center convention in Las Vegas, Nevada, and

could not return within sufficient time to attend the conference. Mr. Abely testified that he was not compensated for the appearances he made on the respondent's behalf and reiterated that he always took annual or compensatory leave whenever he engaged in private matters that were not related to his official duties. He asserted that at no time did he feel compelled or pressured into assisting respondent with matters involving his private law practice and had, on at least one occasion, declined respondent's request without fear of facing any consequences.

OCF also relies upon the hearings conducted of the parties by its Senior Staff Attorney. Additionally, OCF relies upon the pertinent payroll records submitted by the Secretary to the Council of the District of Columbia and KMJDL. Attachments D-E.¹

OCF further relies upon court documents retrieved from matters involving respondent. Attachment F. On August 12, 2004, Mr. Sanford reviewed the District of Columbia Superior Court (S.C.D.C.) case file of Latessar Elliott v. Robert Foster, D.C.S.C. No. 0CA201, which was cited in local media reports as one of the cases of which respondent's staff member, James Abely, appeared on his behalf. The file revealed that James Abely appeared at a mediation session on behalf of the plaintiff, respondent's client, Latessar Elliott on November 19, 2003.

Findings of Fact

Having reviewed the allegations and the entire record in this matter, I find:

1. From January 1999 through the present, respondent filed the required yearly Financial Disclosure Statement because he has served as one of the elected At Large Members of the Council of the District of Columbia (Council), who employed James Abely, Aimee Occhetti and Dora Rodrigues, during a period therein, to work on his Council staff, and he permitted James Abely and Aimee Occhetti to work with him on matters emanating from his private law practice with the articulated understanding that said work could not be performed while either were on government time. OCF records; Attachment (Att.) A at 7-9 & 16; Att. B. at 8; Att. C at 6.
2. From April 1998 through the present, James Abely filed the required yearly Financial Disclosure Statement because he served as a staff attorney with respondent's Council committee, and he regularly performed his duties from 9:00 a.m. until 5:30 p.m. OCF records; Att. C at 11.
3. At the request of respondent, Mr. Abely assisted respondent on matters emanating from his private law practice, which included a scheduling conference in May 2003, and a mediation proceeding in Latessar Elliott v. Robert Foster on November 19, 2003, both in the Superior Court of the

¹ Due to the extremely confidential nature of these documents, they are not appended to this Order. Only proof of their veracity and authenticity is provided by the pertinent custodian in the cited Attachments.

District of Columbia; and, executed leave slips for the time spent on this business.² Att. C at 6-10; Att. A at 10-11; Att. D; Att. F.

4. Mr. Abely voluntarily assisted respondent on matters emanating from his private law practice because there were occasions when respondent requested Mr. Abely to assist him with his private law practice and Mr. Abely refused. Att. C. at 15-16; Att. A at 24-28.
5. From September 1999 through March 2001, Aimee Occhetti filed the required yearly Financial Disclosure Statement because she served as a staff attorney with respondent's Council committee, and she regularly performed her duties from 9:00 a.m. until 5:30 p.m. Att. B at 7-8.
6. At the request of respondent, Ms. Occhetti assisted respondent on a matter emanating from his private law practice by attending a scheduling conference in 2000 or 2001 in the Superior Court of the District of Columbia; and, executed a leave slip for the morning spent on this business. Att. B at 9-10.
7. Respondent requested Ms. Occhetti to assist him on a matter emanating from his private law practice because believed that, as a good and eager attorney starting in her career, Ms. Occhetti would be anxious to broaden her horizon; and, that she was expected to execute a leave slip. Att. A at 24-28.
8. During her employment on respondent's Council committee, Ms. Occhetti asked respondent to assist her with securing part-time employment to augment her salary. Att. B at 8.
9. Respondent assisted Ms. Occhetti by referring her to his private law practice which employed her to perform research, process and investigatory services for compensation for the practice from March 2000 through April 2001 in the evenings, outside of her government work hours. Id. & at 9-11; Att. A at 26; Att. E.
10. Ms. Occhetti worked on matters associated with other partners at respondent's private law practice from March 2000 through April 2001; and, she did not work directly for respondent when she was employed by his private law practice at the stated time. Id.; Att. A at 9-10.
11. Ms. Occhetti became aware of another District government position, Special Assistant to the Director of the Office of Property Management, through someone other than respondent; delivered her resume; interviewed; qualified to be offered that job in April 2001 which she now holds; and has filed the required yearly Financial Disclosure Statement, as a result of the position. Att. B at 13-14.

² Mr. Abely testified that respondent was away on Council-related business on these occasions when he telephoned his request for Mr. Abely's assistance with his private law practice. Att. C at 7 & 17-18.

12. From June 7 through July 30, 1999, Dora Rodrigues was not required to file the Financial Disclosure Statement (FDS) because she served as a legal intern in respondent's Council office in a part-time, temporary position, for which she was paid while actually working and for which an FDS filing was not required; and respondent did not request her to assist on matters emanating from his private law practice at all. Att. A at 7-8.
13. During her employment on respondent's Council committee, Ms. Rodrigues gained part-time, temporary employment from July 7-30, 1999 with respondent's private law practice to augment her salary and experience; and, it is more probable than not that respondent provided for her a good recommendation to the partners at his private law practice. Att. A at 13; Att. D; Att. E.
14. Ms. Rodrigues worked on matters associated with other partners at respondent's private law practice from July 7-30, 1999; and, she did not work directly for respondent when she was employed by his private law practice at the stated time. Att. A at 13-14.

Conclusions of Law

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. Respondent, James Abely and Aimee Occhetti are certain employees of the District of Columbia government subject to the Act's financial disclosure statute at D.C. Official Code §1-1106.02; and, the enforcement provisions of the employee conduct regulations of chapter 18 of the rules of the Office of Personnel.
2. Respondent did not use his official position or office of "At Large Councilmember of the District of Columbia City Council" to obtain financial gain for himself or his private law practice, in violation of D.C. Official Code §1-1106.01(b), when he allegedly availed himself of the legal services of James Abely, Aimee Occhetti, and Dora Rodrigues, when they were employed on respondent's Council staff during a period from 1999 to the present because respondent was requesting a favor in each incident, in his capacity as "client's attorney," from James Abely and Aimee Occhetti for their assistance on matters emanating from his private law practice and to which they responded by using their personal time, when they wished to do so, as a favor given, with no expectation of compensation; and respondent never utilized the legal services of Aimee Occhetti and Dora Rodrigues when they were employed at respondent's private law practice.
3. Respondent did not violate §1804.1(b) of the Standards of Conduct when he allegedly used the legal services of James Abely, Aimee Occhetti and Dora Rodrigues, when they were employed on respondent's Council staff during a

period from 1999 through the present, to perform services for his private law practice during government time and using government resources because James Abely and Aimee Occhetti executed leave slips for the time of performance of any services for respondent on behalf of his private law practice; and, Dora Rodrigues never performed such services.

4. Respondent did not violate §1804.1(c) of the Standards of Conduct when he allegedly ordered, directed or requested James Abely, Aimee Occhetti and Dora Rodrigues to perform legal services for his private law practice during regular working hours, when they were employed on respondent's Council staff during a period from 1999 through the present because James Abely and Aimee Occhetti voluntarily performed any legal services for respondent's private law practice and they executed leave slips for the time of performance of any services; and, Dora Rodrigues never performed such services.
5. Respondent did not violate §1804.1(e) of the Standards of Conduct when he allegedly permitted Aimee Occhetti and Dora Rodrigues to capitalize on his official position or office of "At Large Councilmember of the District of Columbia City Council" because he was unaware in April 2001 that Aimee Occhetti had secured her current position of "Special Assistant to the Director of the Office of Property Management" any recommendation he may have offered on behalf of Dora Rodrigues, if at all, would have been viewed by the partners in his private law practice as one from a fellow partner and not from the "At Large Councilmember of the District of Columbia City Council."

Recommendation

I hereby recommend the Director of the Office of Campaign Finance (Director) to dismiss this matter.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that this matter is hereby dismissed.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

Anwar Wilson
Clerk

cc: Donald R. Dinan, Esq.
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Members
Board of Elections and Ethics

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C., 20009.

